Nos. 18-422, 18-726

In the Supreme Court of the United States

ROBERT A. RUCHO, *et al.*, *Appellants*,
v.
COMMON CAUSE, *et al.*, *Appellees*.

LINDA H. LAMONE, *et al.*, *Appellants*,
v.
O. JOHN BENISEK, *et al.*, *Appellees*.

On Appeals from the United States District Courts for the Middle District of North Carolina and the District of Maryland

BRIEF FOR *AMICI CURIAE* ANTI-DEFAMATION LEAGUE; COUNTY OF SANTA CLARA; DEMOCRACY 21; DEMOS; FRIENDS OF THE EARTH; GOVERNMENT ACCOUNTABILITY PROJECT; LEAGUE OF WOMEN VOTERS, MARYLAND CHAPTER; NATIONAL COUNCIL OF JEWISH WOMEN; NATIONAL FEDERATION OF DEMOCRATIC WOMEN; NORTH CAROLINA JUSTICE CENTER; ONEVIRGINIA2021: VIRGINIANS FOR FAIR REDISTRICTING; AND THE SOUTHERN POVERTY LAW CENTER IN SUPPORT OF APPELLEES

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

STATEMENT OF INTEREST 1

SUMMARY OF ARGUMENT 2

STATEMENT OF FACTS 6

ARGUMENT 8

I. Election Manipulation Through Partisan Gerrymandering Violates Fundamental American Democratic Principles of Representativeness and Accountability in Government. 8

A. Our Founders Established a Government Built Upon the Consent of the Governed. . 9

B. Our Founders Warned That Factions and Partisanship Had the Potential to Threaten Representative Democracy.... 12

C. This Court Has Long Recognized the Centrality of Representativeness and Accountability to American Values. 14

II. The Court Should Continue to Safeguard the People's Right to Vote Free from Election Manipulation. 15

A. This Court Can Develop Judicially Manageable Standards to Adjudicate Partisan Gerrymandering Claims. 17

i. The Court routinely develops doctrinal tests and remedies to enforce the Constitution..... 17

ii. The Court has historically rejected justiciability arguments and developed manageable standards to uphold a fair election process. . 22

iii. Judicially manageable standards for adjudicating a partisan gerrymandering claim exist..... 25

iv. The Court can provide guidance on the types of evidence that can be used to establish an unconstitutional partisan gerrymander. 29

B. Adjudication of Severe Partisan Gerrymanders Is Not Barred by the Political Question Doctrine..... 31

C. Judicial Inaction in Partisan Election Manipulation Cases Would Damage the Status and Integrity of the Court..... 33

III. This Court Should Declare the North Carolina and Maryland Gerrymanders Unconstitutional To Ensure That the American Promise of Representative Democracy Is Fulfilled..... 36

CONCLUSION..... 38

APPENDIX: List of *Amici Curiae* 1a

TABLE OF AUTHORITIES

CASES

Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n,
135 S. Ct. 2652 (2015) 3, 4, 6, 25, 36

Avery v. Midland Cty.,
390 U.S. 474 (1968) 3

Baker v. Carr,
369 U.S. 186 (1962) 23, 31, 32

Benisek v. Lamone,
348 F. Supp. 3d 493 (D. Md. 2018) . . . . . *passim*

Blockburger v. United States,
284 U.S. 299 (1932) 18

Brandenburg v. Ohio,
395 U.S. 444 (1969) 18, 19

Brown v. Bd. of Educ.,
347 U.S. 483 (1954) 35

Brown v. Bd. of Educ.,
349 U.S. 294 (1955) 35

Carpenter v. United States,
138 S. Ct. 2206 (2018) 4, 5, 20

Chisholm v. Georgia,
2 U.S. (2 Dall.) 419 (1793) 14

City of Cleburne v. Cleburne Living Ctr.,
473 U.S. 432 (1985) 18

Clark v. Jeter,
486 U.S. 456 (1988) 18

Clinton v. New York,
524 U.S. 417 (1998) 28

Colegrove v. Green,
328 U.S. 549 (1946) 23

Common Cause v. Rucho,
318 F. Supp. 3d 777 (M.D.N.C. 2018) . . . . *passim*

Davis v. Bandemer,
478 U.S. 109 (1986) 24, 26, 27

Duncan v. McCall,
139 U.S. 449 (1891) 14

Emp't Div. v. Smith,
494 U.S. 872 (1990) 19

Fortson v. Dorsey,
379 U.S. 433 (1965) 23, 24

Gaffney v. Cummings,
412 U.S. 735 (1973) 23

Giles v. Harris,
189 U.S. 475 (1903) 22

Gill v. Whitford,
138 S. Ct. 1916 (2018) 25, 33

Gilligan v. Morgan,
413 U.S. 1 (1973) 34

Gomillion v. Lightfoot,
364 U.S. 339 (1960) 23

Gray v. Sanders,
372 U.S. 368 (1963) 35

Grutter v. Bollinger,
539 U.S. 306 (2003) 18

Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.,
515 U.S. 557 (1995) 19

Illinois v. Gates,
462 U.S. 213 (1983) 18

Int'l Shoe Co. v. Washington,
326 U.S. 310 (1945) 21

Mapp v. Ohio,
367 U.S. 643 (1961) 19

Marbury v. Madison,
5 U.S. (1 Cranch) 137 (1803) 15, 17, 31

Maryland v. Pringle,
540 U.S. 366 (2003) 20, 21

Masses Publ'g Co. v. Patten,
244 F. 535 (S.D.N.Y.), *rev'd* 246 F. 24 (2d Cir. 1917) 19

Massiah v. United States,
377 U.S. 201 (1964) 18

Mathews v. Eldridge,
424 U.S. 319 (1976) 18

M'Culloch v. Maryland,
17 U.S. (4 Wheat.) 316 14

Miller v. Johnson,
515 U.S. 900 (1995) 3, 18, 35

Milliken v. Bradley,
433 U.S. 267 (1977) 19

Miranda v. Arizona,
384 U.S. 436 (1966) 19, 36

Olmstead v. U.S.,
277 U.S. 438 (1928) 5

Oregon v. Kennedy,
456 U.S. 667 (1982) 20

Palazzolo v. Rhode Island,
533 U.S. 606 (2001) 21

Powell v. McCormack,
395 U.S. 486 (1969) 14, 15

Reynolds v. Sims,
377 U.S. 533 (1964) 3, 21, 22, 23, 32

Rogers v. Lodge,
458 U.S. 613 (1982) 3

Shaw v. Reno,
509 U.S. 630 (1993) 3, 35

Sherbert v. Verner,
374 U.S. 398 (1963) 19

Timbs v. Indiana,
No. 17-1091, 586 U.S. ___ (2019) 22

Town of Castle Rock v. Gonzales,
545 U.S. 748 (2005) 22

U.S. Term Limits, Inc. v. Thornton,
514 U.S. 779 15

United States v. Banks,
540 U.S. 31 (2003)..... 21

United States v. Munoz-Flores,
495 U.S. 385 (1990)..... 20

Vieth v. Jubelirer,
541 U.S. 267 (2004)..... 4, 24, 26, 27

Vill. of Arlington Heights v. Metro. Hous. Dev. Co.,
429 U.S. 252 (1977)..... 30

Washington v. Davis,
426 U.S. 229 (1976)..... 18

Wesberry v. Sanders,
376 U.S. 1 (1964)..... 3, 23, 32

White v. Regester,
412 U.S. 755 (1973)..... 3, 23

CONSTITUTION

U.S. Const. amend. XI 14

U.S. Const. art. I, § 2, cl. 1..... 2, 9, 27

U.S. Const. art. I, § 4 27

U.S. Const. art. IV, § 4..... 9

OTHER AUTHORITIES

John Adams, *Thoughts on Government* (1776), *in* 1 The Founders' Constitution (Philip B. Kurkland & Ralph Lerner eds., 1987) 10

Samuel Adams, *The Rights of the Colonists: The Report of the Committee of Correspondence to the Boston Town Meeting* (Nov. 20, 1772), *reprinted in* 7 Old South Leaflets 417 (No. 173) (Burt Franklin 1970) 9

The Declaration of Independence (U.S. 1776) ... 2, 9

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Keith E. Whittington, *The Place of Congress in the Constitutional Order*, 40 Harv. J. L. & Pub. Pol'y 573 (2017) 10, 11, 12

STATEMENT OF INTEREST[1]

Amici Curiae are organizations that pursue public policy goals through the American political system, and governmental entities that ensure public health and safety within the framework of laws developed through that system. Because they work extensively in, and are deeply affected by, the political system and the laws developed through that system, *amici* rely upon fair elections to ensure that elected policy makers represent and are meaningfully accountable to their constituents. Accordingly, they are particularly concerned about partisan gerrymandering, that is, the drawing of district lines to subordinate adherents of one political party and entrench the rival party in power. *Amici* submit this brief to offer an analysis of how severe partisan gerrymandering, as occurred in North Carolina and Maryland, contravenes fundamental, long-standing American democratic values and requires a judicial response to ensure that American government will continue to operate by the consent of the people.

A full list of *amici*, with descriptions of each organization, is attached as an Appendix to this brief.

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[1] Letters from the parties consenting generally to the filing of briefs by *amici curiae* are on file with the Court. Pursuant to Supreme Court Rule 37.6, no part of this brief was written by counsel for any party, and no person or entity other than *amici* and their counsel made any monetary contribution to its preparation or submission. *Amicus* League of Women Voters of Maryland joins this briefly solely with respect to the *Lamone v. Benisek* case, since the League's state affiliate is a party in the *League of Women Voters of North Carolina v. Rucho* case.

SUMMARY OF ARGUMENT

> Governments are instituted among Men, deriving their just powers from the consent of the governed . . . .

The Declaration of Independence para. 2 (U.S. 1776).

This is the bedrock principle of American democracy: government by the consent of the governed. It was implemented in 1787 through the Elections Clause of the Constitution:

> The House of Representatives shall be composed of Members chosen every second Year by the People of the several States . . . .

U.S. Const. art. I, § 2, cl. 1.

Four score and seven years after the Declaration, when President Lincoln sought to reunite the country in a "new birth of freedom" following the Civil War, he encapsulated the core of American democracy as "government of the people, by the people, for the people."

Consistent with the vision of Lincoln and the Founders, this Court has often considered how actions that create an unfair advantage in the electoral process undermine this foundational principle of American democracy. As early as 1964, this Court recognized that district lines can be drawn in ways that jeopardize government by the people, just as much as outright prohibitions on voting:

> The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.

Reynolds v. Sims, 377 U.S. 533, 555 (1964). Thus, in the "one person, one vote" cases, the Court held that "[w]eighting the votes of citizens differently, *by any method or means*," is not justifiable. *Id.* (emphasis added). The Court required proportional district sizes at all levels of government, including state legislative districts (*Reynolds*), U.S. Congressional districts (*Wesberry v. Sanders*, 376 U.S. 1 (1964)), and local government districts (*Avery v. Midland Cty.*, 390 U.S. 474 (1968)).

This Court similarly held that redistricting plans cannot dilute voting power based on the race of voters. *See Rogers v. Lodge*, 458 U.S. 613 (1982); *White v. Regester*, 412 U.S. 755 (1973); *Shaw v. Reno*, 509 U.S. 630 (1993); *Miller v. Johnson*, 515 U.S. 900 (1995).

In *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 135 S. Ct. 2652, 2658 (2015), this Court defined partisan gerrymandering as "the drawing of legislative district lines to subordinate adherents of one political party and entrench a rival party in power." In that case, this Court held that the Constitution, and specifically the Elections Clause, "act[s] as a safeguard against manipulation of electoral rules by politicians and factions in the States to

entrench themselves or place their interests over those of the electorate." *Id.* at 2672.

In the cases now before the Court, the lawmakers who crafted the redistricting plans explicitly conceded their intent to gerrymander for partisan benefit. In both cases, the plans successfully created a partisan electoral advantage. Thus, this Court now confronts two intentional and highly effective partisan gerrymanders that have undermined the will of North Carolina's and Maryland's voters.

This Court has long recognized that severe partisan gerrymanders are "incompatible" with "democratic principles." *Vieth v. Jubelirer*, 541 U.S. 267, 292 (2004) (plurality op.). As evident in the cases *sub judice*, incumbent lawmakers use increasingly sophisticated techniques to redraw electoral districts to entrench their power. Using map-drawing software, highly detailed data about voting patterns, and sophisticated statistical analyses and tools, incumbents "crack" and "pack" electoral districts to ensure continued control over legislatures and congressional districts under virtually any conceivable voting pattern. Voters no longer choose their representatives; party leaders and their consultants craft maps that predetermine representatives, depriving the people of a meaningful voice in government.

In *Carpenter v. United States*, this Court recognized that while the "progress of science" can provide those in power with "new tool[s] to carry out [their] important responsibilities[,]" such tools "risk[] Government encroachment of the sort the Framers . . . [sought] to prevent" and require the Court to expand its conception

of the Fourth Amendment to prevent those harms. 138 S. Ct. 2206, 2223 (2018) (citing Justice Brandeis's dissent in *Olmstead v. U.S.*, 277 U.S. 438, 473–74 (1928)). Just as the *Carpenter* decision safeguarded Fourth Amendment rights in the face of new technological tools and risks, so can the Court safeguard the constitutional integrity of the electoral process in the face of other new technologies.

The Court is not being asked to resolve a "political" question here. Claims of election manipulation have long been held to be justiciable because the Court has the authority to ensure that elections comport with the Constitution. These cases come before the Court in a pair, one partisan gerrymander favoring Republicans and the other favoring Democrats. Setting legal standards for adjudicating such cases will reinforce this Court's traditional role as an independent, nonpartisan arbiter, capable of ensuring free and fair elections conducted in accordance with our constitutional standards, while remaining outside the political process of deciding the outcomes of elections.

The questions before this Court are clear: Will this Court continue the unfinished work that previous Courts advanced when they developed legal standards in other election manipulation cases? Will it protect voters' rights from denial and debasement through the drawing of legislative district lines designed to entrench a ruling party? Will it preserve our "government of the people, by the people, for the people?"

STATEMENT OF FACTS

The facts in North Carolina and Maryland present obvious cases of "the drawing of legislative district lines to subordinate adherents of one political party and entrench a rival party in power." *Ariz. State Legislature*, 135 S. Ct. at 2658. In both states, the redistricting was done by a single party holding exclusive control over drawing and implementing the redistricting plans. With the assistance of outside consultants who specialized in achieving partisan advantage, and using highly sophisticated technology, each party successfully created precise and durable maps that would ensure the entrenchment of the party in power for at least the next decade.

In North Carolina, State Senator Robert Rucho and State Representative David Lewis retained Dr. Thomas Hofeller to create North Carolina's 2016 Congressional Redistricting Plan (the "2016 Plan"), with the explicit goal of providing a maximal and sustainable advantage to Republicans. *Common Cause v. Rucho*, 318 F. Supp. 3d 777, 869 (M.D.N.C. 2018). Dr. Hofeller, a redistricting expert from the Republican National Committee, admitted that his "primary goal" was to draw district lines so as "to create as many districts as possible in which GOP candidates would be able to successfully compete for office" and "to minimize the number of districts in which Democrats would have an opportunity to elect a Democratic candidate." *Id.* at 803. The mapmakers admitted that they were creating a "political gerrymander" in order to "help foster" the election of Republicans, because "electing Republicans is better than electing Democrats." *Id.* at 870.

In Maryland, Governor Martin O'Malley testified that he "set out to draw the borders in a way that was favorable to the Democratic party" when creating Maryland's 2011 congressional districting plan. *Benisek v. Lamone*, 348 F. Supp. 3d 493, 502 (D. Md. 2018). Governor O'Malley readily admitted that "our intent was to create a map that was more favorable for Democrats over the next ten years and not less favorable to them." *Id.* Eric Hawkins, an analyst from a political consulting firm to Democratic organizations, acknowledged that he was given the dual goals of protecting Maryland's incumbent Democratic Representatives and changing the overall make-up of the congressional delegation "from six Democrats and two Republicans to seven Democrats and one Republican." *Id.* at 503.

In both states, the gerrymanders were specifically drawn to create maximum partisan advantage while minimizing potential risks. In North Carolina, Representative Lewis stated that he intended to "draw the maps to give a partisan advantage to 10 Republicans and 3 Democrats because [he] d[id] not believe it [would be] possible to draw a map with 11 Republicans and 2 Democrats." *Rucho*, 318 F. Supp. 3d at 808 (alterations in original). In Maryland, Governor O'Malley testified that he considered gerrymandering to flip either the First or the Sixth District to Democratic control, but decided to go for the Sixth because a gerrymandered First District "would have to jump across the Chesapeake Bay." *Lamone*, 348 F. Supp. 3d at 502.

The plans were unqualified successes. The North Carolina gerrymander produced ten Republican seats out of North Carolina's thirteen-seat congressional delegation, precisely as intended. 53.22% of North Carolina voters statewide voted for Republican congressional candidates, yet North Carolina's delegation remained 76.9% Republican. *Rucho*, 318 F. Supp. 3d at 884. Democratic voting strength was "packed" into three districts, in which Democrats won by overwhelming majorities; Republican voting strength was "cracked" across ten districts, in which Republicans won by "safe" but not overwhelming majorities, so that Republican votes that could be used in other districts would not be "wasted." *Id.* In Maryland, the existing Democratic districts remained safe, while the Sixth District was "flipped" from a district that had previously elected a Republican candidate by a 28% margin in 2010 to one that elected a Democratic candidate in 2012 by a 21% margin. *Lamone*, 348 F. Supp. 3d at 499–501.

ARGUMENT

I. Election Manipulation Through Partisan Gerrymandering Violates Fundamental American Democratic Principles of Representativeness and Accountability in Government.

Representative democracy was the animating value of the Founders. Election manipulation through partisan gerrymandering undermines faith in America's most basic civic principle: the right of the people to elect their representatives and to ensure that

their elected representatives remain accountable to them.

A. Our Founders Established a Government Built Upon the Consent of the Governed.

The United States of America exists because the Founders rebelled against a British government that did not represent the citizenry. Americans objected to acts of the British Parliament such as the Currency Act of 1764, the Sugar Act of 1764, the Stamp Act of 1765, and the Tea Act of 1773. In each case, the core of the protest was the lack of American representation in the Parliament that passed these laws. Samuel Adams explained that the protest was an assertion of the people's right to adequate representation in their government. *See generally* Samuel Adams, *The Rights of the Colonists: The Report of the Committee of Correspondence to the Boston Town Meeting* (Nov. 20, 1772), *reprinted in* 7 Old South Leaflets 417 (No. 173) (Burt Franklin 1970).

Members of Parliament were not elected by, and did not represent, the people they governed. This conflicted with the Founders' core value, that "Governments are instituted among Men, deriving their just powers from the consent of the governed . . . ." The Declaration of Independence para. 2.

Our Founders created a new government in which representatives would be chosen "by the People." U.S. Const. art. I, § 2, cl. 1. They adopted a Constitution that guaranteed every state "a Republican Form of Government . . . ." U.S. Const. art. IV, § 4. As the Heritage Foundation explains, the importance and

meaning of the Guarantee Clause to the participants in the constitutional debate of 1787–1788 was that "republican government was government accountable to the citizenry." Robert G. Natelson, *Guarantee Clause, The Heritage Guide to the Constitution*, The Heritage Foundation, http://www.heritage.org/constitution#!/articles/4/essays/128/guarantee-clause (last visited Feb. 24, 2019).

Two core principles of a republican form of government are representativeness and accountability. The adoption of these core principles was the critical difference between American and British philosophies of government. The British system of government relied on social hierarchy. The ruling class and the people were represented separately. Keith E. Whittington, *The Place of Congress in the Constitutional Order*, 40 Harv. J. L. & Pub. Pol'y 573, 576 (2017). American government, by contrast, was designed to represent the interests of the people, not preserve the status of a ruling class. *See* John Adams, *Thoughts on Government* (1776), *in* 1 The Founders' Constitution 108 (Philip B. Kurkland & Ralph Lerner eds., 1987) (a representative assembly "should think, feel, reason, and act like" the "[p]eople at large").

"Representativeness" does not mean that elected representatives must reflect the political make-up of the citizens in strict proportionality, but that the citizens must be able to elect their representatives free of the control of a ruling class:

> [T]he true principle of a republic is, that the people should choose whom they please to govern them. Representation is imperfect in

> proportion as the current of popular favor is checked. This great source of free government, popular election, should be perfectly pure, and the most unbounded liberty allowed.

2 *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 257 (Jonathan Elliot ed., 2d ed. 1836) [hereinafter *Elliot's Debates*] (A. Hamilton). In other words, representativeness means that individuals' votes must result in meaningful representation.

Our Founders also understood that representativeness in government is intertwined with accountability.[2] Once representatives are elected to office, they must be accountable to the citizenry, rather than being afforded tools to entrench their power regardless of the voters' will. In Federalist 37, James Madison explained: "[T]he genius of republican liberty seems to demand . . . not only that all power should be *derived from the people*, but that those intrusted with it should be *kept in dependence on the people*." The Federalist No. 37, at 192 (James Madison) (P.F. Collier & Son ed., 1901) (emphases added). A representative government "is futile if legislators are not responsive to the constituents that they represent." Whittington, *supra*, at 580. Citizens must have not only the right to elect their representatives, but a meaningful ability to remove them in future elections. Indeed, "[t]he crucial

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[2] Contemporary academics agree that a republican government "is one in which the people control their rulers." *See, e.g.*, Deborah Jones Merritt, *The Guarantee Clause and State Autonomy: Federalism for a Third Century*, 88 Colum. L. Rev. 1, 23 (1988).

function of the people in a democracy is not to make policy but to determine to whom 'the reins of government should be handed.'" *Id.* at 581 (citation omitted).

B. Our Founders Warned That Factions and Partisanship Had the Potential to Threaten Representative Democracy.

Our Founders understood that representativeness and accountability could not be taken for granted and foresaw that a representative democracy contained within it the seeds of its own potential destruction. The liberty provided by free association and democracy naturally leads like-minded citizens to band together to pursue their shared values. Collective political action benefits democracy, but can become dangerous factionalism when the power of a particular faction to pursue its parochial interests undermines the people's right to fair and meaningful representation.

James Madison warned of the dangers of "faction"—"a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community"—but believed that our Constitution would restrain such dangers. The Federalist No. 10, at 45 (James Madison) (P.F. Collier & Son ed., 1901). In fact, Madison regarded this as one of the greatest virtues of the Constitution: "Among the numerous advantages promised by a well-constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction." *Id.* at 44. While Madison understood that the root

causes of factionalism could not be eradicated (and indeed, should not, since such causes were the natural and unavoidable byproducts of liberty, freedom of thought, and freedom of association), Madison also understood that excess factionalism must be restrained by republican government: "If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote." *Id.* As he left office, George Washington likewise warned future generations that, left unchecked, political parties could

> serve to organize faction; to give it an artificial and extraordinary force; to put in the place of the delegated will of the nation the will of a party, often a small but artful and enterprising minority of the community; and, according to the alternate triumphs of different parties, to make the public administration the mirror of the ill concerted and incongruous projects of faction, rather than the organ of consistent and wholesome plans digested by common counsels and modified by mutual interests.

President George Washington, *Farewell Address to the People of the United States* (1796), *reprinted in* S. Doc. No. 106-21, 2d Sess., 14 (2000), https://www.gpo.gov/fdsys/pkg/GPO-CDOC-106sdoc21/pdf/GPO-CDOC-106sdoc21.pdf.

C. This Court Has Long Recognized the Centrality of Representativeness and Accountability to American Values.

Almost 200 years ago, Chief Justice Marshall summarized the essence of American government: "The government of the Union, then, . . . is, emphatically, and truly, a government of the people. In form, and in substance, it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit." *M'Culloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 404–05 (1819); *see also Duncan v. McCall*, 139 U.S. 449, 461 (1891) (a "distinguishing feature" of the republican guarantee is "the right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies"); *Chisholm v. Georgia*, 2 U.S. (2 Dall.) 419, 457 (1793) (defining a republican form of government as "one constructed on [the] principle, that the Supreme Power resides in the body of the people"), superseded in part by U.S. Const. amend. XI.

Examining provisions such as the Qualifications Clause, the Court has long held that a "fundamental principle of our representative democracy is . . . 'that the people should choose whom they please to govern them.'" *Powell v. McCormack*, 395 U.S. 486, 547 (1969) (quoting *Elliot's Debates*, *supra*, 257 (A. Hamilton)). In reaching this conclusion, the Court agreed with John Wilkes' address to the Parliament in 18th-century England: "That the right of the electors to be represented by men of their own choice, was so essential for the preservation of all their other rights,

that it ought to be considered as one of the most sacred parts of our constitution." *Powell*, 395 U.S. at 534, n. 65 (quoting 16 Parl. Hist. Eng. 589–90 (1769)); *see also U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 798, 820–21 (1995) ("an aspect of sovereignty is the right of the people to vote for whom they wish" and "the right to choose representatives belongs not to the States, but to the people"). In *Thornton*, the Court explained that the "Framers, in perhaps their most important contribution, conceived of a Federal Government directly responsible to the people, possessed of direct power over the people, and chosen directly, not by States, but by the people." *Id.* at 821; *see also id.* at 791 ("[W]e recognized [in *Powell*] the critical postulate that sovereignty is vested in the people" and that they have the right to choose their representatives "freely").

This Court has therefore long recognized that, by the design of the Framers, representativeness and accountably are the heart of American democracy. This Court is now once again called upon to protect and defend these core values of our Constitution.

II. The Court Should Continue to Safeguard the People's Right to Vote Free from Election Manipulation.

The redistricting plans in North Carolina and Maryland were designed to manipulate congressional elections for partisan advantage and, therefore, reduce or eliminate citizens' ability to elect representatives whom they could hold accountable. Such behavior is antithetical to the ideals upon which the United States was founded. Since *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 166 (1803), this Court has recognized its

constitutional role, under the Founders' system of checks and balances, to exercise independent oversight over the constitutionality of the acts of other branches of government: "[W]here a specific duty is assigned by law, and individual rights depend upon the performance of that duty, it seems equally clear that the individual who considers himself injured, has a right to resort to the laws of his country for a remedy." As the District Court stated in *Rucho*, there is "no basis to disregard that obligation here" where the issue is as fundamental as the right to free and fair elections. 318 F. Supp. 3d at 843.

Despite the fact that the North Carolina and Maryland gerrymanders are wholly inconsistent with American democratic values, Appellants and others claim that this Court is powerless to do anything about it because:

- Judicially manageable standards have not been discovered by which partisan gerrymandering can be adjudicated;
- Such cases present a non-justiciable political question; and
- Adjudicating partisan election manipulation cases would damage the status and integrity of this Court.

Amici address each of these objections in turn. None should prevent this Court from fulfilling its obligation to safeguard the American electoral system from naked partisan manipulation. While *amici* do not address which of the multiple proposed standards should be adopted by this Court, and leave it to the parties and

other briefs to address those merits questions, *amici* respectfully submit that the Court can and should hold that the partisan gerrymandering plans from North Carolina and Maryland present constitutionally justiciable questions for which the Court can and should set standards for adjudication.

A. This Court Can Develop Judicially Manageable Standards to Adjudicate Partisan Gerrymandering Claims.

The *Rucho* Appellants argue that even though the Court has consistently recognized that severe partisan gerrymanders are incompatible with core American democratic principles, it should do nothing to protect those principles, because it is too difficult to craft a sufficiently precise standard by which to resolve all future cases. *Amici* do not share Appellants' pessimism about the Court's ability to "say what the law is." *Marbury*, 5 U.S. at 177.

i. The Court routinely develops doctrinal tests and remedies to enforce the Constitution.

Judicially manageable standards for enforcing constitutional rights are rarely embedded in the text of the Constitution itself. This Court routinely frames and devises tests or standards used to implement constitutional norms. In the Equal Protection context, for example, the Supreme Court has instructed lower courts to apply differing levels of scrutiny depending on

the classifications at issue.[3] The Court has also developed context-specific formulas to evaluate particular governmental conduct under the Equal Protection Clause, such as the permissibility of facially neutral classifications that disproportionately impact minorities, or the consideration of race when creating voting districts.[4] The Court has similarly developed doctrinal tests to enforce other constitutional rights, such as the factors governing a procedural due process analysis, the totality-of-the-circumstances test that applies to a probable cause determination, the "critical stage" test for determining when the right to counsel attaches, the *Blockburger* test to determine when the Double Jeopardy Clause is implicated, and so on.[5] In First Amendment jurisprudence, the Court has created myriad tests to evaluate governmental action, including the *Brandenburg* test to evaluate

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[3] *See, e.g., Grutter v. Bollinger*, 539 U.S. 306, 326 (2003) (use of race must be justified by a compelling state interest); *Clark v. Jeter*, 486 U.S. 456, 461 (1988) (statutes of limitations applied to paternity suits must be substantially related to important governmental interests); *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985) (where there is no constitutionally suspect classification, action must be rationally related to a legitimate state interest).

[4] *See Washington v. Davis*, 426 U.S. 229, 239–42 (1976); *Miller*, 515 U.S. at 916.

[5] *See Mathews v. Eldridge*, 424 U.S. 319 (1976); *Illinois v. Gates*, 462 U.S. 213 (1983); *Massiah v. United States*, 377 U.S. 201 (1964); *Blockburger v. United States*, 284 U.S. 299 (1932). *See generally* Richard H. Fallon, Jr., *The Supreme Court, 1996 Term—Foreword: Implementing the Constitution*, 111 Harv. L. Rev. 54, 67–101 (1997).

inflammatory speech, the *Hurley* test to ascertain expressive conduct, and the tests developed to delineate the limits of free exercise, as first articulated in *Sherbert v. Verner* and later modified in *Employment Division v. Smith*.[6]

The Court has likewise been both prudent and creative when formulating remedies to constitutional violations, such as, for example, *Miranda* warnings to protect against self-incrimination, the exclusionary rule to enforce the Fourth Amendment, and the use of school bussing to accomplish desegregation.[7]

These judicially created tests and remedies were not "discovered." They took years, sometimes centuries,[8] to develop and evolve. The Court continually reviews and refines them as needed to protect the laws and liberties safeguarded by the Constitution, and to respond to modern challenges to established principles. *See, e.g.*,

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[6] *See Brandenburg v. Ohio*, 395 U.S. 444 (1969); *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557 (1995); *Sherbert v. Verner*, 374 U.S. 398 (1963); *Emp't Div. v. Smith*, 494 U.S. 872 (1990).

[7] *See Miranda v. Arizona*, 384 U.S. 436 (1996); *Mapp v. Ohio*, 367 U.S. 643 (1961); *Milliken v. Bradley*, 433 U.S. 267 (1977).

[8] It took nearly 200 years to establish the current constitutional limits on the government's power to punish speech that is "seditious" and "subversive." For example, the incitement test first urged by Judge Learned Hand in his 1917 opinion in *Masses Publishing Company v. Patten*, 244 F. 535 (S.D.N.Y.), *rev'd* 246 F. 24 (2d Cir. 1917), did not become incorporated into the Supreme Court's First Amendment jurisprudence until 1969, when it decided *Brandenburg v. Ohio*, 395 U.S. 444.

Carpenter, 138 S. Ct. at 2213–15 (advances in technology, such as "more sophisticated surveillance" and the "immense storage capacity" and tracking capabilities of cell phones, have led the Court to "expand[] [its] conception of the [Fourth] Amendment to protect certain expectations of privacy"); *United States v. Munoz-Flores*, 495 U.S. 385, 395–96 (1990) (courts need to "develop" standards "for determining whether a bill is 'for raising Revenue' or where a bill 'originates,'" but finding "no reason that developing such standards will be more difficult in this context than in any other"); *Oregon v. Kennedy*, 456 U.S. 667, 675–79 (1982) (rejecting prior formulations for determining when the Double Jeopardy Clause applies and adopting a more "manageable" test). "[T]he mechanisms for orderly change" constitute the "very heart of the process by which justice can be achieved through law." Henry M. Hart, Jr., *Holmes' Positivism—An Addendum*, 64 Harv. L. Rev. 929, 937 (1951).

These judicially created tests were not formulated with the type of precision the *Rucho* Appellants contend is required in order to be "judicially manageable." Balancing tests play a prominent role in constitutional law, despite being "incapable of precise definition or quantification into percentages because [they] deal[] with probabilities and depend[] on the totality of the circumstances." *Maryland v. Pringle*, 540

U.S. 366, 371 (2003).[9] Judicial tests also often rely upon broad notions of "fairness" and "justice."[10]

The *Rucho* Appellants argue that it will be impossible for lower courts to fairly determine "how much politics is 'too much.'" Appellants' Br. in No. 18-422 ["*Rucho* Br."] 1; *see also* Appellants' Br. in No. 18-726 ["*Lamone* Br."] 33 (casting District Court's test as "a standardless excessiveness inquiry"). But the Court has never held that legal standards must be so exact as to permit mechanical application by the lower courts. In *Reynolds*, the Court recognized it was "a practical impossibility to arrange legislative districts so that each one has an identical number of residents, or citizens, or voters. Mathematical exactness or precision is hardly a workable constitutional requirement." 377 U.S. at 578. The Court trusted lower courts to discharge their duty and uphold the Equal Protection Clause by ensuring that states "make an honest and good faith effort to construct districts" by applying the legal standard announced in *Reynolds*, despite the lack

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[9] *See, e.g., United States v. Banks*, 540 U.S. 31, 36 (2003) ("[W]e have treated [Fourth Amendment] reasonableness as a function of the facts of cases so various that no template is likely to produce sounder results than examining the totality of circumstances in a given case; it is too hard to invent categories without giving short shrift to details that turn out to be important in a given instance, and without inflating marginal ones.").

[10] *See, e.g., Palazzolo v. Rhode Island*, 533 U.S. 606, 633 (2001) (O'Connor, J., concurring) (suggesting that "fairness and justice" determine when a taking has occurred); *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (the existence of personal jurisdiction turns on "traditional notions of fair play and substantial justice" (citation omitted)).

of mathematical precision. *Id.* at 577. Most recently, in *Timbs v. Indiana*, No. 17-1091, 586 U.S. ___ (2019) (slip op., at 2), the Court held that the Eighth Amendment's Excessive Fines Clause applies to state conduct, and left it to lower courts to decide when a state's civil asset forfeiture crosses the line into being "excessive" and "grossly disproportionate." The Court has always relied on the ability of the lower courts to faithfully apply guidelines and standards set forth in its decisions. *See, e.g., Town of Castle Rock v. Gonzales*, 545 U.S. 748, 760–65 (2005) (Scalia, J.) (highlighting various situations in which specific implementation of guidelines set forth by this Court is entrusted to the discretion of the lower courts and other government officials).

ii. The Court has historically rejected justiciability arguments and developed manageable standards to uphold a fair election process.

This Court is adept at creating and refining manageable standards that preserve our nation's fundamental promise of a government of, by, and for the people. It has faced similar challenges to the justiciability of cases involving elections, but has, over time, consistently concluded that its duty to protect and defend constitutional guarantees cannot be curtailed by the difficultly of the task of developing such standards.

In *Giles v. Harris*, 189 U.S. 475, 487 (1903), the Court determined that it lacked jurisdiction to intervene on behalf of a class of African Americans in

Montgomery County, Alabama who were denied the right to register to vote, because "equity cannot undertake . . . to enforce political rights . . . ." In *Colegrove v. Green*, 328 U.S. 549, 556 (1946), the Court likewise concluded that it should not "enter th[e] political thicket" and address Illinois's malapportioned congressional districts.

With time, and a deeper understanding of the consequences of nonintervention, the Court's views evolved. In *Gomillion v. Lightfoot*, 364 U.S. 339, 347–48 (1960), the Court held that it could adjudicate claims challenging the redrawing of municipal boundaries that disenfranchised nearly all African-American residents of City of Tuskegee, by excluding them from the newly defined city.

Two years later, the Court likewise held that malapportionment cases were justiciable and not political questions. *Baker v. Carr*, 369 U.S. 186, 232 (1962). It took another two years for the Court to announce standards for adjudicating such cases. *Wesberry*, 376 U.S. at 7–8; *Reynolds*, 377 U.S. at 577. The Court continued to refine those standards in cases such as *Fortson v. Dorsey*, 379 U.S. 433 (1965), *Gaffney v. Cummings*, 412 U.S. 735 (1973), and others. In addition to the malapportionment cases, the Court continued to redress racial gerrymandering by rejecting plans that draw district lines that dilute voting power based on the race of voters. *See, e.g., White*, 412 U.S. at 765–70.

Thus, the Court has often considered how manipulation of elections undermines American democracy and proceeded, step by step, to develop

standards for adjudicating such cases. Over time, the Court provided manageable guidance in malapportionment cases and remedies for racially motivated attacks against participation in elections. Partisan election manipulation is amenable to exactly the same treatment.

In *Fortson v. Dorsey*, the Court recognized that a redistricting scheme may not "comport with the dictates of the Equal Protection Clause" if it "would operate to minimize or cancel out the voting strength of racial or political elements of the voting population." 379 U.S. at 439. Years later, in *Davis v. Bandemer*, 478 U.S. 109, 124 (1986), the Court reaffirmed the justiciability of partisan gerrymanders and the Court's role in ensuring that "each political group in a State should have the same chance to elect representatives of its choice as any other political group." A plurality concluded, however, that the Indiana Democrats challenging that gerrymander had failed to prove an Equal Protection violation. *Id.* at 136.

Fifteen years ago, in *Vieth v. Jubelirer*, 541 U.S. 267 (2004), a majority of the Court declined to disturb the central justiciability holding of *Bandemer*. In a controlling concurrence, Justice Kennedy held that, despite the justiciability of their claims, the appellants could not prevail because "in the case before us, we have no standard by which to measure the burden appellants claim has been imposed on their representational rights . . . ." *Id.* at 313. Yet all of the Justices reaffirmed that "severe partisan gerrymanders," as Justice Scalia, writing for the

plurality, phrased it, threaten basic democratic values. *Id.* at 292, 311–312, 317, 331, 356.

In *Arizona State Legislature v. Arizona Independent Redistricting Commission*, the Court recognized the need to "safeguard against manipulation of electoral rules by politicians and factions in the States to entrench themselves or place their interests over those of the electorate." 135 S. Ct. at 2672. There is a conflict of interest "inherent when 'legislators dra[w] district lines that they ultimately have to run in.'" *Id.* (alterations in original) (citation omitted). That conflict of interest undermines the core values of representativeness and accountability that the Constitution was designed to ensure.

Most recently, in *Gill v. Whitford*, 138 S. Ct. 1916, 1923 (2018), the Court took another step toward "safeguard[ing] against manipulation of electoral rules[,]" *Arizona State Legislature*, 135 S. Ct. at 2672, by providing guidance for establishing standing in challenges to partisan gerrymanders. The *Rucho* and *Lamone* cases now present the Court with the opportunity to advance the work this Court has already begun by articulating standards for adjudicating such claims.

iii. Judicially manageable standards for adjudicating a partisan gerrymandering claim exist.

Modern technological advances, most notably the use of computerized analysis of voting patterns, have allowed partisan election manipulation to become more extreme and durable in its entrenchment of those in

power, whether by way of the Republican gerrymander in *Rucho* or the Democratic gerrymander in *Lamone*. Armed with these tools to all but ensure permanent entrenchment that overrides the will of their constituents, the *Rucho* Appellants ask this Court to permanently foreclose judicial review. They argue that because the Court has not yet agreed upon a legal standard, it will never be able to do so.

However, as Justice Kennedy emphasized in his concurrence in *Vieth*, the passage of time is not a basis for determining that no judicially manageable standards can exist: "by the timeline of the law 18 years is rather a short period" since the Court had issued its decision in *Bandemer*, and the fact that the lower courts did not discover a better standard during that time only reflects the fact that "the lower courts could do no more than follow *Davis v. Bandemer* . . . ." 541 U.S. at 312. Justice Kennedy explained that Appellants' heavy burden is not just to prove that a claim currently has no workable standard, but to prove the "categorical negative" that "no standard could exist." *Id.* at 311.[11] Appellants can make no such showing here.

Both the *Rucho* and *Lamone* District Courts did precisely as Justice Kennedy asked: they developed

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[11] As the *Rucho* District Court observed, "[A] majority of the Supreme Court never has found that a claim raised a nonjusticiable political question solely due to the alleged absence of a judicially manageable standard for adjudicating the claim." 318 F. Supp. 3d at 842, n.19.

workable and replicable legal standards.[12] *Rucho*, 318 F. Supp. 3d, at 866–67, 949, 950; *Lamone*, 348 F. Supp. 3d at 515. They did so armed with tools that the *Bandemer* and *Vieth* courts did not have: The very same technology (computers, sociological methods, statistical analysis, metrics to measure partisan symmetry, etc.) used to gerrymander for partisan advantage can also be used to determine the existence of such partisan gerrymandering, measure its impact, and adjudicate these claims. *See, e.g.*, *Rucho*, 318 F. Supp. 3d at 805 (Dr. Hofeller created the "aggregate variable" "to predict partisan performance" in North Carolina); *Lamone*, 348 F. Supp. 3d at 503 (Mr. Hawkins used the "Democratic Performance Index" to predict partisan performance in Maryland).

Judicially manageable standards to adjudicate severe partisan gerrymandering not only exist, but have been articulated by the District Courts in their opinions below, which draw directly from this Court's teachings. *See, e.g.*, *Rucho*, 318 F. Supp. 3d at 929 (partisan gerrymander violates the First Amendment when: (1) "the challenged districting plan was intended to burden individuals or entities that support a disfavored candidate or political party," (2) "the

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[12] In fact, legal standards for adjudicating partisan election manipulation cases have been articulated under the Equal Protection Clause, the First Amendment, and § 2 and § 4 of Article I. The *Rucho* Appellants argue that this multiplicity of theories, combined with this Court's failure to adopt a controlling test, means that there can never be a single legal test for adjudicating such claims. *Rucho* Br. 47. In doing so, they ignore that an action can, of course, be unconstitutional for multiple reasons.

districting plan in fact burdened the political speech or associational rights of such individuals or entities," and (3) "a causal relationship existed between the governmental actor's discriminatory motivation and the First Amendment burdens imposed by the districting plan"); *id.* at 861 (partisan gerrymander violates the Equal Protection Clause if (1) it was passed with "discriminatory intent," and (2) it produces "discriminatory effects," that (3) cannot be attributed to "another legitimate redistricting objective"). These standards are comparable in scope, substance, and manageability to other tests adopted by this Court. This process—lower courts expanding upon and developing the teachings of this Court—is entirely consistent with the way legal tests and standards develop through constitutional and common law jurisprudence.

If, however, this Court finds that the District Courts applied erroneous standards, the remedy should be to correct the standard and remand for further proceedings. The Court need not choose between demanding an unrealistic level of "precision" and concluding that no meaningful standard can possibly exist. "Abdication of responsibility is not part of the constitutional design." *Clinton v. New York*, 524 U.S. 417, 452 (1998) (Kennedy, J., concurring).

iv. The Court can provide guidance on the types of evidence that can be used to establish an unconstitutional partisan gerrymander.

Judicially manageable tests should not be confused with the types of evidence used to prove a violation of these standards. As is evident from the robust record below, there is a great deal of sophisticated evidence that can be used to provide proof of unconstitutional election manipulation, such as the efficiency gaps, computer models, and technical tools used to create the gerrymander; evaluations of partisan asymmetry; etc. Indeed, it is the advances in technology that both make partisan gerrymandering such a threat to democracy and that distinguish the recent spate of cases from the Court's previous consideration of the issue.

Modern redistricting software enables pinpoint precision in designing districts, allowing mapmakers to render extreme and durable partisan districts that still conform to traditional districting requirements, such as contiguity and compactness. But these same advancements in technology can provide objective evidence of what entrenched legislators intended to achieve when drawing these maps, and how successful they were in achieving their partisan goals.

In *Rucho*, for example, the District Court found that the empirical analyses plaintiffs relied on

> provide *evidence* that the 2016 Plan violates a number of well-established constitutional standards—that the government act impartially,

> not infringe the right to vote, not burden individuals based on the exercise of their rights to political speech and association, and not allow state legislatures to dictate electoral outcomes or interpose themselves between the voters and their representatives in Congress.

318 F. Supp. 3d at 853 (emphasis in original). This Court "long has relied on statistical and social science analyses as *evidence* that a defendant violated a standard set forth in the Constitution or federal law[,]" particularly in the Equal Protection context. *Id.* (emphasis in original).

To the extent that the Court has concerns about the reliability or relevance of certain types of evidence offered by litigants to prove (or disprove) that a legal standard has been met, the solution is to provide guidance about what kind of evidence is most material or probative. *See, e.g., Vill. of Arlington Heights v. Metro. Hous. Dev. Co.*, 429 U.S. 252, 267 (1977) ("The historical background of the decision is one evidentiary source, particularly if it reveals a series of official actions taken for invidious purposes. . . . Departures from the normal procedural sequence might also afford evidence that improper purposes are playing a role."). Through such guidance, this Court can "promote the equal treatment of like cases, enhance predictability, foster judicial restraint by limiting judges' discretion, and encourage judicial steadfastness by providing judges a 'solid shield' when they resist popular pressures." Richard H. Fallon, Jr., *Judicially Manageable Standards & Constitutional Meaning*, 119 Harv. L. Rev. 1275, 1284, n. 34 (2006) (citing Antonin

Scalia, *The Rule of Law as a Law of Rules*, 56 U. Chi. L. Rev. 1175, 1178-80 (1989)).

B. Adjudication of Severe Partisan Gerrymanders Is Not Barred by the Political Question Doctrine.

The *Rucho* Appellants argue that "the framers delegated the delicate task of federal oversight of state regulations concerning congressional elections to Congress, not federal courts" and that this delegation means the courts have no role to play. *Rucho* Br. 31. This argument misstates the respective roles of the co-equal branches of government. The states have the authority to choose the time, place, and manner of elections; Congress has the authority to make laws regulating such activities; and the judiciary has the authority to determine whether such activities comport with the Constitution. This responsibility has rested with the federal courts since *Marbury v. Madison*. 5 U.S. at 177–78 ("It is emphatically the province and duty of the judicial department to say what the law is. . . . The judicial power of the United States is extended to all cases arising under the constitution.").

Appellants are attempting to re-litigate precisely the arguments rejected in *Baker v. Carr*, and in numerous cases since. As stated in *Baker*:

> An unbroken line of our precedents sustains the federal courts' jurisdiction of the subject matter of federal constitutional claims of this nature. The first cases involved the redistricting of States for the purpose of electing Representatives to the Federal Congress. When

> the Ohio Supreme Court sustained Ohio legislation against an attack for repugnancy to Art. I, s 4, of the Federal Constitution, we affirmed on the merits and expressly refused to dismiss for want of jurisdiction . . . .

369 U.S. at 201. *Baker* established that "the mere fact that the suit seeks protection of a political right does not mean it presents a political question. Such an objection 'is little more than a play upon words.'" *Id.* at 209 (citation omitted).

This Court again considered and rejected such arguments in *Reynolds v. Sims* when it held: "We are cautioned about the dangers of entering into political thickets and mathematical quagmires. Our answer is this: a denial of constitutionally protected rights demands judicial protection; our oath and our office require no less of us." 377 U.S. at 566. The same argument was also rejected in *Wesberry v. Sanders*: "The right to vote is too important in our free society to be stripped of judicial protection by such an interpretation of Article I." 376 U.S. at 7.

As discussed above, the intent and effect of the partisan gerrymanders at issue was to undermine the ability of North Carolina's and Maryland's citizens to elect accountable representatives. It therefore endangers the American concept of governmental power derived from the consent of the governed. Over fifty years ago, the Court provided judicial review for a redistricting claim because "a denial of constitutionally protected rights demands judicial protection . . . ." *Reynolds*, 377 U.S. at 566. For the more than fifty years since *Reynolds*, the Court has consistently

reaffirmed its jurisdiction to determine whether a manipulation of the electoral process violates the Constitution.[13]

The Court should not cast aside such long-standing constitutional protections of our electoral processes. The need for judicial protection is just as critical today in these cases. Severe partisan gerrymanders cannot be resolved by the democratic political process, because, by their very nature, they subvert the democratic political process. Without this Court's intervention, our system will devolve into precisely what our Founders declared our independence from: government administered by an entrenched ruling class, rather than by the consent of the people.

C. Judicial Inaction in Partisan Election Manipulation Cases Would Damage the Status and Integrity of the Court.

At oral argument in *Gill v. Whitford*, Chief Justice Roberts articulated what he perceived to be the "main problem" with partisan election manipulation cases: The Court will be perceived as picking one political party or the other in each individual case, thus enmeshing itself in political elections and causing "serious harm to the status and integrity of the decisions of this Court in the eyes of the country." Tr. of Oral Arg. 36–38, 138 S. Ct. 1916 (2018).

Amici have no interest in enlisting the Court in determining election outcomes. Instead, *amici* ask the Court to enforce the rules of elections so that they are

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[13] *See Rucho*, 318 F. Supp. 3d at 847 (collecting cases).

conducted in a manner consistent with the Constitution. The citizens of the United States view the Court, and *amici* believe that the Court views itself, as obligated to safeguard the rule of law and to protect citizens' constitutionally guaranteed political rights against politicians' attempts to render those rights meaningless. As this Court recognized in *Gilligan v. Morgan*, 413 U.S. 1, 11 (1973): "[V]oting rights cases, indeed, have represented the Court's efforts to strengthen the political system by assuring a higher level of fairness and responsiveness to the political processes, not the assumption of a continuing judicial review of substantive political judgments entrusted expressly to the coordinate branches of government." Claims of election manipulation have long been understood to be justiciable, not because the Courts have a right to interfere with elections, but because they have a duty to protect elections from interference.

Moreover, *amici* respectfully submit that inaction by the Court would run the same risk. The concern about the perception of the Court enmeshing itself in political elections must be balanced against the countervailing concern that the Court may suffer similar serious harm to its status and integrity if it is perceived as incapable of safeguarding the most fundamental cornerstone of republican democracy: free and fair elections untarnished by naked partisan manipulation. The Maryland and North Carolina gerrymanders come before the Court together, each major political party complaining of severe partisan gerrymandering by the other. The Court is not being asked to "pick[] one political party or the other." Both parties agree that partisan gerrymandering is

improper, at least when they find themselves on the losing end of such a gerrymander. Nevertheless, given the current legal uncertainty, each party continues to employ the practice when it believes it can benefit from it, and will bring claims when it is negatively impacted.

Setting legal standards for adjudicating these claims will reinforce this Court's role as an independent and nonpartisan arbiter. The Court will not be siding with one political party or the other, but siding, as it always must, with the core American value of ensuring a free and fair election process that fulfills the promise of a government by the consent of the governed.

Adjudicating these cases is unlikely to result in an "onslaught of litigation," as the *Rucho* Appellants suggest. *Rucho* Br. 1. It is precisely the lack of such standards that has prompted the recent slew of partisan gerrymandering cases. As occurred in other election manipulation cases, once this Court sets appropriate standards, efforts will be made to comply with those standards. For example, after the Court articulated the "one person, one vote" standard in *Gray v. Sanders*, 372 U.S. 368, 381 (1963), Georgia could have modified the County Unit System, but instead chose to move to using a simple popular vote system in primary elections. States have made similar efforts to comply with the racial gerrymandering standards articulated in *Shaw v. Reno* and *Miller v. Johnson*.

Similar effects have been seen in other areas: efforts at education integration following *Brown v. Board of Education*, 347 U.S. 483 (1954) and *Brown v. Board of Education*, 349 U.S. 294 (1955); the development of

standard warnings to criminal defendants after *Miranda v. Arizona*, 384 U.S. 436 (1966). Here, the knowledge that their redistricting plans will be subject to judicial review will counterbalance legislators' impulse to gerrymander for their own partisan benefit. The risk of having their redistricting plans struck down as unconstitutionally partisan will make partisan gamesmanship less likely.

III. This Court Should Declare the North Carolina and Maryland Gerrymanders Unconstitutional To Ensure That the American Promise of Representative Democracy Is Fulfilled.

The records in the two cases before the Court make clear that these partisan gerrymanders present exactly the type of redistricting schemes that violate core American democratic values of representativeness and accountability. By their own admission, the drafters of these plans sought to put their own political preferences ahead of the political will of the people. In the judgment of the drafters in North Carolina, "electing Republicans is better than electing Democrats." *Rucho*, 318 F. Supp. 3d at 809. The drafters in Maryland "set out to draw the borders in a way that was favorable to the Democratic party." *Lamone*, 348 F. Supp. 3d at 502. Such plans serve only to "subordinate adherents of one political party and entrench a rival party in power," *Ariz. State Legislature*, 135 S. Ct. at 2658, and for the reasons explained in the decisions below, were properly deemed unconstitutional.

If this Court fails to set limits on partisan election manipulation schemes like North Carolina's 2016 Plan or Maryland's 2011 Plan, the promise of government by the people enshrined in the Declaration of Independence, the Constitution and the Gettysburg Address will suffer greatly. Because the very nature of the problem is a political system that has been rigged to resist the will of the people as expressed in elections, and because partisan election manipulation offends basic constitutional rights and principles, this Court is uniquely positioned as the only American institution that carries both the ability and the responsibility to safeguard our foundational American democratic ideals.

At Gettysburg, President Lincoln encapsulated the vision of our Founders as a "government of the people, by the people, for the people." It now falls to this Court to ensure that a "nation so conceived and so dedicated, can long endure."

CONCLUSION

The judgments of the courts below should be affirmed.

Respectfully submitted,

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APPENDIX

APPENDIX: List of *Amici Curiae*

The **Anti-Defamation League** ("ADL") was founded in 1913 to advance good will and mutual understanding among Americans of all backgrounds and races, to combat racial, ethnic, and religious discrimination in the United States, and to fight hate, bigotry, and anti-Semitism. Its founding charter, which proclaimed that ADL's mission would be "to secure justice and fair treatment to all citizens alike and to put an end forever to unjust and unfair discrimination against . . . any sect or body of citizens," guides ADL's work to this day. ADL believes that the Constitution requires that each person in our nation receive equal treatment under the law, and that severe partisan gerrymanders undermine the right of every voter to have a meaningful say in the democratic political process.

The **County of Santa Clara** ("County") is a charter county organized and existing under the laws of the State of California. Its mission is to protect the health, safety, and welfare of 1.9 million County residents. As an entity subject to federal law, as well as a governmental entity with a responsibility to protect the welfare of its residents, the County has a strong interest in promoting and protecting core democratic principles at the local and national levels. The County also administers local, state, and federal elections.

Democracy 21 is a non-profit, non-partisan policy organization that works to eliminate the undue influence of big money in American politics, to ensure the integrity and fairness of our elections and government decisions, and to promote citizen

participation in the political process. It supports campaign finance, voting, redistricting and other political reforms to ensure that American democracy is representative and accountable, conducts public education efforts for these ends, participates in litigation involving the constitutionality and interpretation of campaign finance and other democracy reform laws, and works for the proper and effective implementation and enforcement of those laws. Democracy 21 has participated as counsel or *amicus curiae* in many cases before this Court involving the constitutionality of campaign finance and other government reform laws.

Demos is a national public policy organization working for an America where everyone has an equal say in our democracy and an equal chance in our economy. Demos works to advance voting rights and curb the undue influence of big money in politics, in addition to promoting economic opportunity and racial equity. Severe partisan gerrymandering undermines Americans' right to full and equal participation in our democracy, and therefore directly threatens Demos' goals. Demos has regularly submitted briefs as *amicus curiae* to this Court, and appeared as counsel before the Court in the October 2017 Term in *Husted v. A. Philip Randolph Institute*, No. 16-980.

Friends of the Earth ("FoE") is a non-profit organization, founded in 1969, with offices in Washington, D.C. and Berkeley, California. FoE has close to 300,000 members in all 50 states. FoE's mission is to defend the environment and champion a healthy and just world. FoE works to create, maintain,

and enforce stronger and more effective environmental laws and policies. As part of that mission, FoE's democracy campaign fosters more responsive democratic political institutions by opposing (a) gerrymandering and voter suppression methods that suppress the voice of American voters, and (b) the use of unrestricted money in politics to unfairly influence the public agenda, especially environmental concerns.

The **Government Accountability Project** ("GAP") is a non-profit, non-partisan public interest organization that promotes government and corporate accountability by litigating whistleblower cases, publicizing whistleblowers' concerns, and developing legal reforms to support the rights of employees to use speech rights to challenge abuses of power that betray the public trust. Representative democracy, like whistleblowing, is a mechanism to promote institutional accountability. Severe partisan gerrymandering undermines a functional and fair government accountable to the people. GAP, as an organization committed to protecting civil society from the effects of an unaccountable government—corruption, illegality, abuses of authority, and dangers to public health, safety and the environment—joins this brief.

The **League of Women Voters, Maryland Chapter** ("LWVMD") is a nonpartisan, nonprofit corporation organized under the laws of the State of Maryland. LWVMD works with and through 16 local leagues around the state and is part of the League of Women Voters of the United States, which has 700

state and local leagues in all 50 states, the District of Columbia, Puerto Rico, the Virgin Islands, and Hong Kong. LWVMD reaches more than 375,000 residents annually and works to expand informed, active participation in state and local government, giving a voice to all Marylanders. LWVMD joins this brief solely with respect to the *Lamone v. Benisek* case, since the League's state affiliate is a party in the *Rucho* case.

The **National Council of Jewish Women** ("NCJW") is a grassroots organization of 90,000 volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms. NCJW's Resolutions state that NCJW resolves to work for "Election laws, policies, and practices that ensure easy and equitable access and eliminate obstacles to the electoral process so that every vote counts and can be verified." Consistent with its Principles and Resolutions, NCJW joins this brief.

The **National Federation of Democratic Women** is a grassroots organization giving voice to women in the Democratic Party. It is made up of member states who have statewide organizations recognized by their state party and who adhere to the bylaws of the NFDW in conformity with the Democratic National Committee. Its mission is to unite Democratic women, cultivate Democratic women candidates and activists, and support candidates and elected officials who advocate for the rights of women and the ideals of the Democratic Party.

The **North Carolina Justice Center** is a leading research and advocacy nonprofit organization. Its mission is to eliminate poverty in North Carolina by ensuring that every household in the state has access to the resources, services and fair treatment it needs to achieve economic security. Achieving its mission requires the full and free participation of all North Carolinians in our democracy. The Justice Center joins in this brief because severe partisan gerrymandering burdens its efforts to create a North Carolina that works for all.

OneVirginia2021: Virginians for Fair Redistricting ("OneVirginia2021") is a nonprofit corporation organized to initiate a comprehensive effort to remove partisan gerrymandering from the redistricting process in Virginia. OneVirginia2021 pursues reform through public education, participation in litigation, and other means. Severe partisan gerrymandering undermines our democratic institutions, weakens the rule of law, violates the rights of citizens to Equal Protection, and allows the government to disadvantage voters whose political views differ from those of incumbent legislators. OneVirginia2021 is committed to electoral districts that fairly represent the viewpoints of all voters, no matter where they fall on the political spectrum.

The **Southern Poverty Law Center** is a nonprofit civil rights organization dedicated to advancing and protecting the voting rights of all citizens, especially racial minorities and those living in economically disadvantaged communities. The SPLC advocates on behalf of individuals and groups to help ensure their

full and equal participation in our democracy, including at the state and other local levels. Since its founding in 1971, the SPLC has won numerous landmark legal victories on behalf of the exploited, the powerless, and the forgotten. The organization's lawsuits have toppled institutional racism in the South, and it continues to work towards expanding the franchise to those traditionally excluded from the political process based on their race, color, national origin, and economic status. As part of its work, SPLC has filed multiple *amicus curiae* briefs in the Supreme Court of the United States and the United States Courts of Appeals.